

DELTA PROTECTION COMMISSION

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DRAFT MINUTES

DELTA PROTECTION COMMISSION MEETING

6:30 p.m. on JULY 27, 1995

JEAN HARVIE COMMUNITY CENTER
14273 RIVER ROAD, WALNUT GROVE

1. Call to Order/Roll Call.

The meeting was called to order at 6:35 p.m. Commissioners present included: Chairman McCarty, Commissioners Broddrick, Calone, Freeman, McGowan, Mello, Salmon, Sekelsky, Simas, and Yates. Vice Chair Fargo, Commissioners Curry, Nottoli, Thomson, and Torlakson arrived late. Commissioners absent included: Ferreira, Hill, Murphy, and Salmon.

2. Public Comments.

There were no public comments.

3. Chairman's Report.

Chairman McCarty reported that the next meeting would be Thursday, August 24, 1995. He noted the upcoming Courtland Pear Fair on Sunday, July 30, 1995. He also noted that the Land Use and Resource Management Plan for the Primary Zone of the Delta had been reproduced and distributed to the Commission.

4. Attorney General's Report.

In Rick Frank's absence, Ms Aramburu read a memo outlining the status of the two lawsuits. She noted that Bio Gro had requested a temporary restraining order, but that after hearing the arguments, the Sacramento County judge declined to issue the order. She noted that the Sweet Home decision had been released by the Supreme Court and noted that Rick Frank had promised to make a report on that matter. She noted the Commissioner's packet included an informational memo regarding pending legislation, SB 205, which would limit State authority over biosolids.

5. Executive Director's Report.

Ms Aramburu reported the State budget will be approved soon; reviewed materials included in the mailing packet; thanked all those who assisted in reproduction of the Plan; reported on the status of the GIS and the recreational user study--the Department of Parks and Recreation has withdrawn their funding--the project will now be a survey and an inventory of facilities, but not an analysis; and reported on meetings. She said she had met with the Coast Guard and Department of Boating and Waterways. She said she had toured the Lodi Sewage Treatment Plant with Commissioners Curry and Yates; had attended a meeting with Sacramento Area Flood Control Agency; attended a meeting of the Regional Subcommittee of the San Francisco Estuary Program, at which a workshop on channel islands was endorsed; attended a meeting of the Resources Agency's Levee Committee; and said Chairman McCarty sent a letter to Secretary Wheeler indicating the value of GP 14 and the need to reissue GP 14. She noted release of a new report on toxics in fish tissues and a new report from Department of Fish and Game on Mitigation for Delta Levee work. She also noted a special hearing on San Joaquin water issues associated with the CALFED process and noted the release of a report on the Category III projects.

6. Minutes.

Commissioner Curry asked the meaning of the term "taking"; Commissioner Potter responded. On a motion by Commissioner Simas and a second by Commissioner Calone, the minutes were approved.

7. Pending Projects Memo.

There were no comments or questions about the memo.

8. Briefing by Ellen Johnck, Executive Director of the Bay Planning Coalition. (Note this matter was taken up after the Ducks Unlimited grant program because the speaker was late in arriving.)

Ms Johnck briefed the Commission on the activities of the Bay Planning Coalition, a nonprofit lobbying group representing landowners, ports, and other regulated entities in the Bay Area, particularly in regard to the Long Term Management Strategy (LTMS) (disposal of dredged materials) and regulatory reform.

Ms Johnck distributed a packet of information about the Bay Planning Coalition (BPC) and reviewed the activities to date of the BPC on streamlining regulation of dredging and the LTMS to find locations to dispose of dredged materials for activities in the Bay Area. She reviewed the need to team with other groups and work with the regulatory agencies to develop "win-win" solutions. She suggested the Commission be involved in coalition building to address Delta issues and to ensure the Commission is involved in developing solutions.

Commissioner Calone asked where spoils are being disposed; Ms Johnck indicated that there is now an ocean, deep water disposal site. Commissioner Calone asked that there be consideration and support of using the dredged materials for maintenance of islands in the western Delta which provide wetland habitat.

Commissioner Curry asked if the ocean disposal site is 55 miles offshore; she said yes. Ms Aramburu commented that there are upland disposal sites, such as that at Montezuma in Solano County. Commissioner Curry asked how the material is moved; Ms Johnck said special dredges are being designed and built.

9. Review and Action on Applications for 1995 Ducks Unlimited, Delta Protection Commission Grant on Private Lands in the Delta. The Commission will hold a public hearing, consider, and make recommendations for funding projects on private lands to enhance wildlife habitat.

Ms Aramburu reviewed the history of the process. She said the purpose of the grants is to enhance habitat values on private lands and to carry out the Central Valley Habitat Joint Venture. She said criteria was developed, notice of the program circulated, and an article appeared in the River Herald. She passed out a corrected map at the meeting because one site was omitted, and she introduced Steve Burton, representing Ducks Unlimited (DU). She suggested that the public hearing be opened and upon close of the public hearing, staff would present recommendations. She also reviewed changes/corrections to the staff report based on "fine-tuning" of the projects.

Commissioner Broddrick noted that a new criteria of a permanent easement had been added after the criteria was prepared for public circulation; She agreed and said that DU had not noticed the omission, but it is a key aspect of the grant program from the funding source. She noted there are many ways to meet that criteria including federal or state purchase of easements or donation of easements. Mr. Burton outlined the participation in other programs such as Presley

program (10 or 20 year program), Wetlands Reserve Program (SCS)-federal agreement for minimum of 20 years) which would serve. Commissioner Broddrick noted the WRP program is not permanent.

Chairman McCarty opened the public hearing.

Bob Pacini of Winter Island Farms commented on the program. He said he thought the program was set up for Delta Protection Commission to give comments back to DU, but it appears that DU has already made decisions about the grants, without the Commission's input. He added that his duck club has natural wetlands; their application for a water control gate would enhance existing wetlands and asked why the club wouldn't be eligible for at least some funds through the grant program. He said he feels the Commission was used, because the club was rejected without the Commission's review and input. He asked about the "pecking order".

Commissioner Mello asked if the projects had already been picked; Mr. Pacini said thats what he understood.

Mr. Pacini asked if he could get a list of funding programs from Commissioner Broddrick.

Commissioner Nottoli said based on the staff report, no decision has yet been made. Mr. Pacini said he understood that the decisions have been made without Commission input.

He said the Club has existing wetlands they have asked for a grant to install a flood gate and based on his review of the criteria, the project would conform.

Chairman McCarty said the project would be given due consideration. The public hearing was closed.

Chairman McCarty asked for questions from the Commission. Commissioner McGowan asked if a staff recommendation had been made; Ms Aramburu said not yet.

Commissioner Broddrick asked if DU had correspondence with the individual applicants telling them they are eligible for funding, or if the full list before the Commission is open to consideration; Mr. Burton said he and Ms Aramburu had met and come up with a list of projects to recommend, and yes, there has been correspondence. Commissioner Broddrick asked the nature of the correspondence; Mr. Burton said in one instance it was a no, with the reasons why DU could not fund the project based on limits of the grant from the Fish and Wildlife Foundation. An application to repair levees could not be funded; Ms Aramburu said that application had been withdrawn. Mr. Burton said DU had sent a letter stating DU

could not give a grant of \$15,000 for a flood gate because DU is not sure the floodgate will enhance wildlife habitat. Commissioner Broddrick asked if the analysis was performed by the technical services staff; Mr. Burton said there are several reasons for the decision: there was no guarantee of the water quality; the technical services people did not think the floodgate would work as proposed; and engineering was not provided.

Commissioner Nottoli said the staff report does not include the analysis described by Mr. Burton; he believed that all the proposals would be open to consideration. He was concerned that DU had already told one applicant that their project was not suitable and did not make that information available to the Commission. Mr. Burton said that the Delta Protection Commission was sent a copy of the letter to Winter Island. Commissioner Nottoli asked if that letter was in the material given to the Commission.

Ms Aramburu said that letter was not distributed to the Commission and suggested reviewing the process of analyzing the applications. Regarding the staff recommendation, she was at a disadvantage because she is not a wildlife nor wetlands expert and the projects did not appear very different. When the staff summary was mailed, she was not prepared to make any recommendations, instead she summarized the applications and analyzed them only in light of the criteria circulated to the Commission and to the public. She said she had prepared a chart (passed out at the meeting) summarizing the projects in light of the analysis of DU staff regarding the value of the projects for wildlife habitat enhancement. She noted that the grant funds are limited to \$40,000. The chart notes the amount of the application; the amount of the total project; and conformance with the criteria. All the projects met the first six criteria. The next analysis reflects the technical expertise of DU staff who regularly works with this type of project. She noted that almost all the projects are duck clubs, which surprised her, she thought there would be applications from farmers. The chart shows that DU believes that some of the projects would provide better habitat than others, and notes the projects use other sources of funding rank higher. She said the criteria which was expanded upon by DU is the criteria of carrying out the Central Valley Habitat Joint Venture: the basin; creation of new wetlands from upland areas; growth of duck food (dry/wet); creation of mosaic of dry/wet; and adjacent to other habitat areas. She said if it were up to her, she would make a slightly different recommendation, but as DU are the habitat experts, she recommends heeding to DU's analysis, but the Commission should make its comments to DU. She noted the process was more difficult than she expected.

Commissioner Nottoli repeated that he was frustrated, and said maybe the Commission got into a process that is more technical without the Commission having full understanding of the process, and then DU has brought some restrictions which weren't known to the Commission or the staff. He said maybe DU should have gone ahead with the grant program on its own and saved all the DPC staff time that has been put into this program.

Commissioner McGowan asked what is the Commission's role; are we lending credence to the DU grants; Ms Aramburu said the original proposal from DU was that the Commission would be joint managers of the grant program. The Commission has been a partner and helped notify the public, helped developed criteria, created a public forum for review of the projects. The projects do carry out the goals of the Plan; there is an overlapping and support of the Commission's goals and policies. As noted, there are aspects of the program which are more technical which are rightly the domain of DU. Commissioner McGowan said in this partnership, the Commission should tell DU if the projects carry out the Commission's goals, but the technical evaluation should come out of DU. Ms Aramburu said if some of the projects cannot be funded through this grant program, she suggested that DU provide assistance to help the applicants find appropriate funding from some of the many programs available, and there may be technical assistance DU can provide. She noted there may be additional funds next year and the Commission could ask DU to provide assistance to those who are interested in enhancing habitat to prepare projects that would be fundable.

Commissioner Mello said part of the Commission's role is to allow the public to comment on the projects. He is willing to take the technical guidance of DU.

Commissioner Potter said the Commission did provide a broader forum. He said that the projects are all duck clubs, but the Commission did provide information to a broader group.

Commissioner Torlakson asked about the "in kind" contributions and agreed with Commissioner Nottoli about the process, the problem of lack of information, and with ranking, and discerning the differences between the projects. He asked if the only project not recommended for funding is the Winter Island project; Ms Aramburu said there funds for the top five on the chart; and no funds for Winter Island or the Chadock Duck Pond. Commissioner Torlakson asked if the applications were ranked on the chart; Ms Aramburu said no, they were simply listed in the order discussed. Commissioner Torlakson asked how the need to

enhance and maintain existing wetlands ranked versus creating new wetlands; Ms Aramburu said a large area of wetland was not ranked as high as a "mosaic" of dry and wet areas, and noted that some clubs provide duck food by farming and providing grains and then flooding in the winter. Mr. Burton said there are several types of wetlands; a seasonal wetland in the Yolo Bypass is more important than a permanent wetland, because the Bypass is an historic major wintering area for wintering waterfowl. Permanent water/wetlands produce habitat for breeding birds, not wintering waterfowl. Commissioner Torlakson asked about "other funds", does in-kind count for that; he asked if DU sat down with Winter Island and Chadock. Mr. Burton said DU visited Winter Island last spring, made suggestions for improvements and identified sources of funding; for the Duck Pond, there was no site visit, but talked to the landowners on the phone and discussed the project to complete the application. The land-owners' work can include in-kind work; the "other funds" are from other grant programs. Ms Aramburu said the landowners who have figured out how to obtain grants, or have been in such programs in the past, are rewarded, while landowners without that experience are penalized under the current criteria; these are the areas for improvement in a second year of a program.

Commissioner Yates asked if there is any money from the Commission; Mr. Burton said no. Ms Aramburu said the Commission's contribution is the staff time, an insert in the regular mailing, and contact with the press to get coverage in the local paper; the grant funds are from the Fish and Wildlife Foundation.

Vice Chair Fargo asked for staff recommendations for funding; Ms Aramburu said the amount requested is recommended for the top five on the chart; based on DU's analysis, the recommendation for the last two is zero. She asked if the funding amount is enough and not excessive; Mr. Burton said yes, the amounts have been reviewed and found appropriate.

Commissioner Broddrick said with the current applications, the projects with seasonal wetland versus permanent wetlands, and projects with existing easements from older programs, which really aren't as available anymore, the grant funds aren't enough to compensate the landowners for an easement in perpetuity. He suggested that the entities who can take advantage of this program are those with existing easements, helping to capitalize improvements, which is different than a program to generally improve habitat. He said he is not happy with proposals to remove swales, because the swales provide diversity of habitat. He said now the Commission can more fully understand the

objectives of DU, the question is this objective what the Commission thought it was supporting when it agreed to be a participant. The criteria used may not be on target with the goals of the Commission, they may not. He said looking at permanent wetland resources, such as Winter Island, are very scarce, and are subject to loss. The permanent wetlands support multiple species. The clubs that already have easements, have learned to survive through artful grantsmanship. The criteria which has been developed, makes it difficult for other sites to break in.

Commissioner Mello asked if the "other funds" are public funds; Ms Aramburu said yes.

Commissioner Yates is concerned that the Commission is spending public funds in this grant program with no "technical" evaluation by the Commission.

Commissioner Potter asked what would happen if the Commission suggested changes in the funding to cut some of the five projects and fund portions of the two unfunded projects.

Commissioner Torlakson said that's a good approach and added the Commission could suggest that the unfunded projects be ranked high for next year's grant program.

Commissioner McGowan asked if staff is satisfied that the level of review would allow the Commission to support the proposed projects.

Commissioner Broddrick asked Mr. Burton if DU would be flexible as to funding; Mr. Burton said he would be willing to go back to his supervisors.

Vice Chair Fargo suggested that a subcommittee be created to review the projects in depth; the information in the staff report is insufficient.

Commissioner Simas said the Commission doesn't have enough information or have enough expertise, and changing the amount of funds may jeopardize the projects.

Commissioner Potter suggested the Commission approve four projects and hold Medford, Winter Island, and Chadock Duck Pond for further study. He commented that permanent habitat is extremely valuable and the Commission has a responsibility to consider the policy issues.

Commissioner McGowan said if DU is carrying out a portion of the Commission goals and there are other programs to carry out other goals, the real question is how much tinkering is DU going to allow the Commission. If it's a take it or leave it deal, lets take it and move on.

Commissioner Mello asked if a delay would affect the projects; Commissioner Broddrick said he didn't know; but the clubs want to take advantage of dry soil. At the Commission's pleasure, the applicants should meet DU's criteria and the Commission should accept that criteria, or decide not to participate.

Commissioner Torlakson suggested giving a subcommittee authority to make final recommendations; would DU allow the Commission to support permanent wetlands as well as seasonal wetlands; could the unfunded projects be assisted to prepare a fundable project for next year's grant program; Mr. Burton said there is room for some adjustment of the criteria; but some of the criteria is mandated. Commissioner Torlakson made a motion to create a subcommittee to review the applications and forward a final recommendation to DU in the month of August, with possible adjustment of the funding, and to enter into a dialog with DU regarding criteria for next year's program, and possible ear-marking of un-funded projects for next year's funding cycle; seconded by Commissioner Simas.

Commissioner Potter commented, if the grants are a "take it or leave it", then the Commission should only see the projects that DU is going to fund, for confirmation that the projects are consistent with the Plan and the Act.

Commissioner Yates said if there are no options on the criteria, the Commission is not a partner, the Commission is only rubber-stamping.

Commissioner Curry said he runs a grant program for the Department of Boating and Waterways; the staff takes only fundable projects to the Commission; the biggest problem is when the Commission tries to do the staff work.

Commissioner McGowan asked if staff believed the projects had been adequately analyzed; Ms Aramburu said the Commission did not receive adequate information about all the criteria, the program did not turn out as staff expected. Commissioner McGowan said a more detailed analysis returned to the Commission.

Vice Chair Fargo said she is uncomfortable earmarking projects for special consideration next year and suggested deleting the prioritization of the unfunded projects.

Commissioner Mello called the question.

Commissioner Torlakson asked that these applications receive more scrutiny. He wanted the criteria broadened to include permanent wetlands and lands without permanent easements, if acceptable to DU.

Commissioner McGowan couldn't support that, but asked that the subcommittee make recommendations.

Commissioner Curry asked for clarification of the criteria (50% match; \$40,000 pot); Mr. Burton said the project site must be protected under some type of permanent easement. Commissioner Curry made a substitute motion to accept the staff recommendation and vote on the matter immediately; seconded by Commissioner McGowan.

Commissioner Calone said he was not going to participate due to a conflict; Chairman McCarty said he was not going to participate due to a possible conflict.

The Commission voted by roll call:

Commissioner Calone said now that the matter has been resolved, he wanted to comment on the criteria--the requirement for an easement was not included in the original criteria and in earlier discussions with DU, the easement issue was not raised. He expressed great dismay with the difficulty in received financial assistance to protect, maintain, and enhance existing wetlands in the Delta, such as those at Winter Island.

10. Consideration and Possible Adoption of Resolution on the San Luis Drain. The Commission considered a staff-prepared background report and two alternative resolutions regarding the San Luis Drain. One resolution would support no releases from the San Luis Drain into the Delta; one would support Commission participation in hearings and other forums addressing the future of agricultural drainage from the San Luis Unit. The Commission previously considered adopting a Resolution at its May, 1995 meeting, and directed further evaluation at a Subcommittee Meeting in June 1995.

Ms Aramburu reviewed the Commission's actions to date. She said the Subcommittee created by the Commission met in June and forwarded to the Commission a memo and two draft resolutions. Also included in the packet were Mr. Hildebrand's memo, and new letters distributed at the meeting which support Resolution B. She noted that several

local governments that are members of ABAG have adopted a resolution similar to Resolution A. She noted that Resolution A is similar to the resolution reviewed at the last meeting; Resolution B indicates that the Commission will participate in evaluating possible solutions to the drainage problems.

Commissioner Torlakson said the discussion at the Subcommittee was positive but did not result in a unified recommendation. He supports adopting Resolution A, with the addition of two other "resolves": based on public input, add language that the Commission would work with the South Delta interests to develop and implement alternative drainage solutions; and take the second page of B and add that to Resolution A. He said the Commission, can do both A and B and position the Commission to participate in the long and complicated process. He said the Commission must first take the position protecting the Delta, and opposing wastes released into the Delta, then participate in the process to develop alternative solutions.

Commissioner Broddrick said its important to recognize that salts are being released from agricultural lands now, regardless of the San Luis Drain; Resolution A is simple and straightforward, precluding releases into the Delta. The Subcommittee discussion covered several topics including: Commission is charged with protecting the water quality of the Delta; there is an existing problem that is not going to go away and will likely get worse; and the Bureau has decided that Delta disposal is not a real alternative, but the problem has not gone away. Various options are being evaluated, including new agricultural practices and combining the State and federal water projects. He said the role of the Commission should be to take a role as a policy player in the State Board hearings and once all the options are developed, evaluating the options to determine which options are "good" for the Delta.

Commissioner Yates said he agrees with Commissioner Broddrick, that the Commission should continue in the process and when the options are developed, the Commission should "weigh in". He said the language that says the wastes should not be exported out to the Valley is inappropriate; that option must be left open.

Chairman McCarty asked for public comments.

Jerry Robinson, representing the South Delta Water Agency, said the South Delta Water Agency supports Resolution B. He suggests a multi-pronged approach; some wastes isolated and held in the Valley, and some wastes diluted and released into the Delta. He suggests the Commission work within the process to help develop a solution to the problems.

Ed Steffani, representing the Stockton East Water District, a 120,000 acre district serving urban and rural water users, said the District built a new water conveyance structure which is not being used because New Melones Dam water is being released to dilute the wastewaters coming into the South Delta. He supports adoption of Resolution B, because it keeps all the options open and lets all parts of the community work together for the good of the Delta.

Robertta Goulart, from Contra Costa County Water Agency, said the County is not advocating continuation of the existing situation; the County is advocating a serious look at alternatives to a drain into the Delta area. No real considerations are going to be considered until the least costly alternative, the San Luis Drain, is eliminated as an alternative. Contra Costa County Water Agency supports Resolution A, or a combination of A and B as suggested by Supervisor Torlakson.

Chairman McCarty closed the public hearing.

Commissioner Potter said he is the Chairman of the San Joaquin Valley Drainage Council; their final report is complete and will be released soon. He said the Council would support B over A, and DWR would also support B over A. He suggested combining the two by saying that A was considered, and B was adopted.

Commissioner Torlakson moved adoption of amended Resolution A, with deletion of the last line "and favors a drainage program which does not export agricultural waste out of the San Joaquin Valley", to focus the resolution on the role of the Delta Protection Commission, and to protect the Delta, including the new "whereas" paragraphs outlined earlier, and adding the line "and other various proposals". He urged the Commission be clear and strong on this matter, and start from a position of strength, as the Commission did on the wastewater and biosolids issue. The motion was seconded by Commissioner Thomson.

Commissioner Potter said adopting this resolution would hamper the Commission's role in the process.

Commissioner McGowan commented on the need to protect the Delta, not the need to keep all the options open. He said the resolution should be honest about the Commission's policy.

Commissioner Yates said the San Joaquin Drainage Committee, of which he is a member, should be able to consider all options, such as using water from New Melones Dam to dilute drainage to such an extent that water quality is actually improved; this option would not be acceptable under the proposed resolution.

Commissioner Mello agreed with earlier remarks of Commissioners Broddrick and Yates. The problem is currently affecting the Delta; he supports Resolution B.

Vice Chair Fargo suggested editing amended Resolution A to read "opposes release of harmful wastewaters"; Commissioner Torlakson agreed to the amendment.

Commissioner Potter commented that the South Delta residents that are living with the problem now all oppose adoption of Resolution A.

Chairman McCarty said he needs more information. The Commission can review future options, then decide whether to preclude disposal into the Delta.

Commissioner Broddrick suggested as a compromise revised language to Resolution B to read "WHEREAS, the Commission strongly considered adopting a position of absolute prohibition of Delta disposal due to concerns related to water quality impacts", on page 2 between the second and third paragraphs.

Commissioner Potter made a substitute motion to adopt Resolution B as amended by Commissioner Broddrick; seconded by Commissioner Broddrick.

Commissioner Torlakson urged no votes on the substitute motion, in favor of amended Resolution A.

Chairman McCarty asked for roll call vote on amended Resolution B: Broddrick:yes; Calone:no; Curry:yes; Fargo:no; Freeman:yes; McCarty:yes; McGowan:no; Mello:yes; Nottoli:yes; Potter:yes; Sekelsky:yes; Simas:yes; Thomson:no; Torlakson:no; and Yates:yes. The amended Resolution B was adopted 10 to 5.

Commissioner Torlakson asked how the Commission would monitor the process--staff or a subcommittee? He commented that drinking water and other intakes should be protected.

Chairman McCarty suggested that the San Luis Drain Subcommittee and staff ensure full participation and when the time is right, the issue be brought back to the Commission.

Commissioner Mello urged that a solution not be selected based on its price tag.

Commissioner Broddrick moved retaining the San Luis Drain Subcommittee and adding a fifth member; seconded by Chairman McCarty. The motion was approved on a voice vote. Chairman McCarty appointed Commissioner Thomson to sit on the Levee Subcommittee.

11. Authorization for Executive Director and Chairman to Respond to Requests for Project Support.

The Commission considered and authorization of the Executive Director, with the concurrence of the Chairman, to respond to requests for support of proposed projects.

Commissioner Fargo moved adoption of the staff report; seconded by Commissioner Simas.

Commissioner Mello suggested these matters should come to the Commission for consideration to allow for public comment.

Commissioner Fargo asked that all Commissioners receive copies of the letters.

The motion was approved on a voice vote; Commissioner Mello voted no.

12. Commissioner Comments/Announcements.

Commissioner Potter suggested that it would be timely to hold a meeting of the Levee Subcommittee to discuss Corps of Engineers projects in the Delta area and changing FEMA rules.

Commissioner Curry asked that he be included on the Levee Subcommittee.

Chairman McCarty asked that a discussion of the future of the Commission be agendized for the next Commission meeting.

13. Adjourn.

The meeting was adjourned at 9:30 p.m.